

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TRISTIAN SMITH,

Plaintiff,

v.

IRS,

Defendant.

Case No. 2:14-cv-01444-GMN-PAL

REPORT OF FINDINGS AND
RECOMMENDATION

(IFP App – Dkt. ##16, 17)

This matter is before the court on Plaintiff Tristian Smith's Applications to Proceed In Forma Pauperis (Dkt. ##16, 17). Plaintiff is proceeding in this action pro se. This matter was referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rules IB 1-3 and 1-4.

Previously, Plaintiff submitted an incomplete Application to Proceed in Forma Pauperis (Dkt. #1). In an Order (Dkt. #11), the court denied the Application without prejudice and directed Plaintiff to file a fully-completed one. Plaintiff has submitted another form application as well as a supplemental statement; however, Plaintiff has not responded to Questions 4, 5, 6, 7, 8 on the new Application. In addition, Smith has attached a narrative to her Application, concerning Plaintiff's great uncle who refused to give Plaintiff an inheritance and had Plaintiff arrested for trespass. Plaintiff asserts a boyfriend and others are "[trafficking and abusing]" her, "syndicated persons keep robbing [her] of everything," and people have tried to "knock out [her] teeth." IFP Application (Dkt. #16) at 2. Plaintiff asserts the "syndicated hub is at 5th Avenue Pub, where they send persons out . . . to peddle drugs, steal I.D.s, harm persons in the public." *Id.* at 3. Based upon Plaintiff's failure to respond to Questions 4-8, the court cannot determine whether Plaintiff qualifies to proceed in forma pauperis.

1 In addition, even if Plaintiff did qualify to proceed in forma pauperis, the complaint
 2 would not survive the court's initial screening required by 28 U.S.C. § 1915. It does not state a
 3 claim upon which relief can be granted because like the Application, it contains similar
 4 delusional allegations. Plaintiff's complaint consists of a single, largely incoherent, sentence that
 5 begins, "[Trafficking] tax student for monies of 6425 for thousand[s] of students [trafficking]
 6 school for over 10,000 Liberty tax school sui-ing for School Warm Springs tax service offered
 7 by I.R.S. for certification for work student credits plus my tax return for 2014 tax credits for
 8 student one time assistance from IRS total 50,000 vagrancy depletion due for not receiving check
 9 in timely mannor" Complaint at 1 (as in original). Plaintiff contends this is a "vagrancy
 10 complaint and injuries complaint" resulting from a police officer who took Plaintiff's car,
 11 causing Plaintiff to be homeless. *Id.* at 2. Plaintiff also that in attempting to get her tax refund
 12 back, criminals assaulted her, and "teeth knocked out of my mouth bleeding and sex [trafficking]
 13 incidents trying to traffic in general." *Id.* 28 U.S.C. § 1915(d) authorizes the court to dismiss
 14 "claims whose factual contentions are clearly baseless," such as "claims describing fantastic or
 15 delusional scenarios." *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). Here, even if Plaintiff
 16 qualified to proceed in forma pauperis, the court would recommend dismissal of the complaint
 17 because it does not state a claim upon which relief can be granted.

18 Accordingly,

19 **IT IS RECOMMENDED** that Plaintiff's Applications to Proceed in Forma Pauperis
 20 (Dkt. ##16, 17) be DENIED, and the Clerk be directed to close this case.

21 Dated this 11th day of February, 2015.

22
 23 
 24 PEGGY A. LEEN
 UNITED STATES MAGISTRATE JUDGE

25 **NOTICE**

26 These findings and recommendations are submitted to the United States District Judge
 27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
 28 after being served with these findings and recommendations, any party may file written

1 objections with the court. Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing
2 to object to the findings and recommendations of a magistrate judge shall file and serve *specific*
3 *written objections* together with points and authorities in support of those objections, within
4 fourteen days of the date of service of the findings and recommendations. The document should
5 be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties
6 are advised that failure to file objections within the specified time may waive the right to appeal
7 the district court’s order. *See Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). The points and
8 authorities filed in support of the specific written objections are subject to the page limitations
9 found in LR 7-4.